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ETS Oilfield Services, L.P. and Lloyd W. Oster Case 16-CA-172847

October 25, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On December 23, 2016, Administrative Law Judge Sharon Levinson Steckler issued the attached bench decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The judge found, applying the Board's decisions in *D. R. Horton*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining and enforcing a Mutual Agreement to Arbitrate that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial.

Recently, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S.Ct. 1612 (2018), a consolidated proceeding including review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. Id. at ___, 138 S.Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. Id. at ___, 138 S.Ct. at 1619, 1632.

The Board has considered the decision and the record in light of the exceptions and briefs. In light of the Supreme Court's ruling in *Epic Systems*, which overrules

the Board's holding in *Murphy Oil*, we conclude that the complaint must be dismissed.¹

ORDER

The complaint is dismissed.

Dated, Washington, D.C. October 25, 2018

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Roberto Perez, Esq., for the General Counsel.

Mike S. Moore and Mitchell Clark, Esqs., for the Respondent.

BENCH DECISION AND CERTIFICATION

SHARON LEVINSON STECKLER, Administrative Law Judge. I heard this case on December 5, 2016, in Corpus Christi, Texas. On the same day, after the parties rested, I heard oral argument and issued a bench decision, pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In the complaint, the General Counsel alleged that ETS Oilfield Services (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by maintaining an overly broad arbitration agreement.

For the reasons stated by me on the record, I found that Respondent violated Section 8(a)(1) of the Act as alleged. In my bench decision, I included Conclusions of Law and my Order. I also attach an appropriate posting to the oral decision.

In accordance with Section 102.45 of the Board's Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix," the portion of the transcript containing this decision.¹

Dated, Washington, D.C. December 23, 2016.

APPENDIX

STATEMENT OF THE CASE

SHARON LEVINSON STECKLER, Administrative Law Judge. This case was tried in Corpus Christi, Texas today, December 5, 2016. Charging Party Lloyd W. Oster, an Individual, (Oster)

¹ We find no need to pass on the General Counsel's motion to remand this case for dismissal, which is moot in light of this decision.

¹ The bench decision appears in uncorrected form at pp. 36 through 48 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as "Appendix" to this certification.

filed the charge on March 29, 2016, and the General Counsel issued the complaint on August 23, 2016. The issue presented is narrow and requires no credibility determinations: Whether Respondent's arbitration agreement, on its face, violates Section 8(a)(1) of the Act.

The parties presented their cases this morning and followed with their oral arguments. I have carefully considered these arguments. Therefore, upon the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent has been a limited partnership doing business as ETS Oilfield Services, L.P. ETS Services Management, LLC has been the general partner and Devin W. Nevilles has been the limited partner. Respondent has maintained a principal office and place of business in Robstown, Texas, and shop in Seguin, Poteet, Laredo, Marshall, and Odessa, Texas, well as Watford, North Dakota, and Rock Springs, Wyoming. Its services include testing fluids and motors for oil companies. In conducting its operations for the 12-month period ending April 1, 2016, Respondent performed services valued in excess of \$50,000 in states other than the State of Texas. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ARBITRATION AGREEMENT

I am attaching a copy of Respondent's Mutual Agreement to Arbitration at Appendix A to this decision. The arbitration agreement was entered into evidence as General Counsel's Exhibit 3. Respondent and General Counsel stipulated that all employees are required to sign the Mutual Agreement to Arbitrate and it has been in effect since August 2014. (GC Exh. 4.) In the meantime, on November 21, 2016, Charging Party, who is no longer employed by Respondent, filed a Motion for Conditional Collective Action Certification for misclassification of employees pursuant to the Fair Labor Standards Act; he claims employees were required to work hours without overtime pay due to the misclassification. (See R Exh. 1.)

The Agreement contains the following language that is in question:

As such, I agree that I am waiving my right to file, participate or proceed in class or collective actions (including a Fair Labor Standards Act ("FLSA") collective action) in any civil court or arbitration proceeding, including but not limited to receiving or requesting notice from a pending collective action. Therefore, I agree that I cannot file or opt-in to a collective action under this Agreement unless agreed upon by me and the Company in writing.

In short, employees may not join together in any forum to pursue certain actions involving wages, hours and terms and conditions of employment, including but not limited to, statutory claims such as wage claims under the FLSA. The agreement also permits employees to file charges under the National Labor Relations Act.

Respondent ETS' affirmative defense is that the arbitration

agreement is consonant with current Fifth Circuit precedence. The Fifth Circuit has held that a class action waiver in arbitration agreements does not violate Section 8(a)(1) of the Act. *Murphy Oil USA v. NLRB*, 808 F.3d 1013 (5th Cir. 2015); *D. R. Horton, Inc. v. NLRB*, 737 F.3d 344 (5th Cir. 2013), denying enforcement in relevant part 357 NLRB 2277 (2012). With all due respect to the Fifth Circuit, I am required to apply the Board's current case law regarding class action waivers in arbitration agreements until if and when the Board or the Supreme Court holds otherwise. *Waco Inc.*, 273 NLRB 746, 749 fn. 14 (1984); *Iowa Beef Packers*, 144 NLRB 615, 616-617 (1973). No Supreme Court decision has directly addressed this issue. *Chesapeake Energy Corp.*, 362 NLRB 681 (2015), enf. denied in rel. part 633 Fed.Appx. 613 (5th Cir. 2016). So let's talk about what current Board law states.

Section 7 of the Act states that employees have the right to engage in certain rights, or refrain from them. Those rights include the right:

... to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

"In determining whether a work rule violates Section 8(a)(1), the appropriate inquiry is whether the rule would reasonably tend to chill employees in the exercise of their Section 7 rights." *Hyundai America Shipping Agency*, 357 NLRB 860 (2011). "Where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement." *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998) (footnote omitted), enf. 203 F.3d 52 (D.C. Cir. 1999). "In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation." *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004).

If the rule explicitly restricts Section 7 rights, it is unlawful. *Id.* at 646. If it does not, "the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." *Id.* at 647. Ambiguous rules are construed against the drafter of the rule. *Flex Frac Logistics, LLC*, 358 NLRB 1131, 1132 (2012), remanded on other grounds 360 NLRB 1004 (2014), enf. 746 F.3d 205 (5th Cir. 2014).²

The Board does not wait until chill is apparent but instead acts to dispel the rule before chill occurs. *Hooters of Ontario Mills*, 363 NLRB No. 2, slip op. at 21 (2015), citing *Flex Frac*,

² The first *Flex Frac* decision was issued by a Board panel whose members included two persons whose appointments to the Board were eventually considered invalid. *NLRB v. Noel Canning*, ___ U.S. ___, 134 S.Ct. 2550 (2014). Before *Noel Canning* issued, the United States Court of Appeals for the Fifth Circuit enforced the Board's Order. No question exists about the validity of the court's judgment. See *Lily Transportation Corp.*, 362 NLRB 406, 406 fn. 2 (2015).

supra. An ambiguous rule can chill employees' Section 7 protected activities by creating "a cautious approach" to the activities because of fears of employer retaliation. *Whole Foods Market, Inc.*, 363 NLRB No. 87, slip op. at 3 fn. 11 (2015). Therefore, all rules are examined to determine whether an employee would reasonably construe the language to prohibit Section 7 activities. *Lily Transportation Corp.*, 362 NLRB 406 (2015). The test for Section 8(a)(1) violations is not subjective, but objective: "[W]hether [it] would reasonably have a tendency to interfere with, restrain or coerce employees in the exercise of their Section 7 rights . . ." See generally *Multi-Ad Services, Inc.*, 331 NLRB 1226, 1227-1228 (2000), enf'd. 255 F.3d 363 (7th Cir. 2001). Also see *Whole Foods Market*, 363 NLRB No. 87, slip op. at 2, citing *Triple Play Sports Bar*, 361 NLRB 308, 314 (2014), enf'd. 629 Fed.Appx. 33 (2d Cir. 2015).

The Board recently affirmed Administrative Law Judge Tracy's decision in *California Commerce Club, Inc.*, 364 NLRB No. 31 (2016). Her words are instructive about arbitration agreements and collective action pursuant to the Act:

The Board's majority reaffirmed in *Murphy Oil*, "the NLRA does not create a right to class certification or the equivalent, but as the *D. R. Horton* Board explained, it does create a right to pursue joint, class, or collective claims if and as available, without the interference of an employer-imposed restraint." *Murphy Oil*, supra, slip op. at 2 (citing *D. R. Horton*, supra, slip op. at 10 fn. 24). Here, Respondent's Agreement, as a condition of employment, precludes employees from pursuing claims concertedly and thus "amounts to a prospective waiver of a right guaranteed by the NLRA." *Murphy Oil*, supra, slip op. at 9 (citing *National Licorice Co. v. NLRB*, 309 U.S. 350, 361 (1940), and *J.I. Case Co. v. NLRB*, 321 U.S. 332, 337 (1944)).

In addition, she elaborated that the Board set forth reasons within its decision in *Murphy Oil* when the Act and Federal Arbitration Act work together, but we are reminded by that decision that the FAA allows arbitration as a matter of consent, but not coercion. Requiring employees to waive their rights to act collectively acts as a prospective waiver of a right guaranteed by Section 7 of the Act and the Board consistently finds unlawful agreements that require employees to prospectively waive their Section 7 rights. The requirement that Respondent agree to a possible joinder means any efforts to do remain squarely within Respondent's control; it therefore would preclude employees from pursuing such claims, which also makes the agreement unlawful. *24 Hour Fitness*, 363 NLRB No. 84, slip op. at 2 (2015).

At least three cases are now pending review for certiorari with the Supreme Court. Only one of these cases is a Board case, *Lewis v. Epic System Corp.*, 823 F.3d 1147 (7th Cir. 2016), petition for cert. No. 16-285 September 2, 2016; *Morris v. Ernst & Young*, 834 F.3d 975 (9th Cir. 2016), petition for cert. No. 16-300 September 8, 2016. *24 Hour Fitness USA Inc. v. NLRB*, 2016 WL 3668038 (5th Cir. 2016), reviewing 363 NLRB No. 84 (2015), petition for cert. No. 16-701 filed November 23, 2016.

Lewis v. Epic System Corp. also provides guidance for finding that requirement an arbitration agreement requiring waiver

of class and collective claims was unenforceable.

General Counsel correctly cites the arguments about use of agencies instead of employees having a separate judicial forum from *Solarcity Corp.*, 363 NLRB No. 83 (2015). With the Board so holding, I am again bound by the Board's reasoning.

Respondent contends that it has been prejudiced by Charging Party's failure to attend the hearing. As previously noted, the standard for reviewing an agreement, on its face, is objective instead of subjective. Respondent also suggests that, Charging Party may be waiving its rights under the NLRA because it filed a Motion of Conditional Class Action Certification. However, examination of the Motion reveals that Charging Party in no way has reversed its position that the agreement is unlawful as it raises the same issue in the Motion. (See R. Exh. 2 at 18-26.)

Lastly, Respondent contends that proceedings regarding the unlawful arbitration provisions are designed to incur costs to employers and undermines the policy of the Act. The policy of the Act is to promote industrial peace, as stated in Section 1 of the Act. True, the Agency does wish to expedite as much as possible. However, the Board also incurs costs to enforce the Act. I am unaware of any policy or procedure of the Board to inflict costs on respondents, whether employer or union.

This preclusion infringes on employees' Section 7 rights, and thus violates Section 8(a) (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent ETS Oilfield Services, L.P. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent violated Section 8(a)(1) of the Act by maintaining its Mutual Agreement to Arbitrate which requires employees to resolve employment-related disputes exclusively through individual arbitration proceedings and relinquish their rights to resolve such disputes through class or collective action.

3. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Act has not been violated in any other way.

REMEDY

When an arbitration agreement violates Section 8(a)(1), the agreement must be rescinded.

All employees who have been required to sign such an agreement must be notified that the agreement is no longer in effect and, if Respondent revises or replaces the agreement, given lawful copies of the new agreement.

I shall also order a posting at all locations where the agreement has been in effect.

ORDER

The National Labor Relations Board orders that the Respondent, ETS Oilfield Services, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a Mutual Agreement to Arbitrate that requires employees, as a condition of employment, to waive the right to maintain employment-related class or collective actions in all forums, whether arbitral or judicial.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Rescind the Mutual Agreement in all of its forms or revise it in all of its forms to make clear to employees that the Mutual Agreement to Arbitrate does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums.

(b) Notify all current and former employees employed since October 29, 2015, who were required to sign or otherwise become bound to the unlawful Mutual Agreement to Arbitrate in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

(c) Within 14 days after service by the Region, post at its facilities where the Mutual Agreement to Arbitrate has been in effect, copies of the attached notice marked "Appendix. B." Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 29, 2015.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

When the transcript of this proceeding has been prepared, I will issue a certification which attaches as an appendix the portion of the transcript reporting this bench decision. When the certification is served upon the parties, the time period for filing exceptions will begin to run. I direct your attention to the Board's Rules and Regulations regarding the time period for filing exceptions. I want to thank counsel for the General Counsel and counsel for Respondent for your professionalism in presenting this case. With that, the trial is now closed and we are off the record.

APPENDIX A

MUTUAL AGREEMENT TO ARBITRATE

This Mutual Agreement to Arbitrate (Agreement) is for the purpose of resolving claims by arbitration and is mutually binding upon both me and my employer ETS Oilfield Services, LP (Company) and any other entity owned, controlled, or managed by the Company. The following contains the terms and conditions of the binding Agreement which I agree to en-

tirely.

Introduction:

I agree to arbitrate and resolve any and all employment-related disputes between the Company and affiliate entities and myself. I understand that the consideration for this Agreement is my employment, or continued employment, with the Company and the different benefits that go along with employment with the Company, including the promises and commitment [sic] made in this Agreement. I understand that the purpose of this Agreement is to provide both the Company and myself a way in which claims or disputes may be resolved by binding arbitration rather than litigation in recognition of the fact that resolution of any differences in the courts is rarely time or cost effective for either party, the Company and I have entered into this Agreement to establish and gain the benefits of a speedy, impartial, and cost-effective dispute resolution procedure. I understand that arbitration is for the purpose of resolving disputes between me and the Company. As such, I agree that I am waiving my right to file, participate or proceed in class or collective actions (including a Fair Labor Standards Act (FLSA) collective action) in any civil court or arbitration proceeding, including but not limited to receiving or requesting notice from a pending collective action. Therefore, I agree that I cannot file or opt-in to a collective action under this Agreement unless agreed upon by me and the Company in writing. In no way does this Agreement serve to preclude me from bringing an unfair labor practices claim against the Company pursuant to the National Labor Relations Act.

Disputes Covered:

Any matter covered under this Agreement or concerning the legality or interpretation of this Agreement shall be heard and decided under the provisions and authority of the Federal Arbitration Act, 9 U.S.C. § 1 as applicable. For purposes of this Agreement, an employment-related dispute includes, but is not limited to, *all disputes*, including statutory and common-law claims, whether under state federal or local law, including, but not limited to, theories arising from breach of implied or express contract, implied covenant of good faith and fair dealing, constructive discharge, wrongful discharge, negligence, gross negligence, false imprisonment, fraudulent concealment, worker's compensation retaliation, intentional infliction of emotional distress, misrepresentation, personal injury, claims arising from work-related activities, unsafe workplace, unlawful discrimination, retaliation or harassment, sexual harassment violations of Title VII of the Civil Rights Act of 1964, as amended, Age Discrimination in Employment Act (ADEA), Americans With Disabilities Act (ADA), Family and Medical Leave Act (FMLA), Fair Labor Standards Act, (FLSA), whistle blowing, wrongful termination in violation of public policy, and defamation. [sic] I acknowledge that any employment dispute directly or indirectly affecting my Company shall be subject to binding arbitration, including disputes against supervisors and managers that involve my employment. Notwithstanding, either party may seek temporary injunctive relief through a court of competent jurisdiction, pending final resolution of the dispute in Arbitration.

In the event that I execute a separate *written* binding and enforceable contract with the Company to govern any particular aspect of my employment relationship, including but not limited to confidentiality or non-competition agreements, I agree that, to the extent of any conflict with this Agreement, the express terms regarding the resolution of disputes contained in the separate *written* binding and enforceable contract shall control. I also acknowledge that this Agreement applies to all employment disputes, regardless of when it [sic] arises, including disputes that arise or are asserted after I leave the Company. Furthermore, I understand that this Agreement applies to any dispute that occurred before or after I sign this Agreement.

Under this Agreement, I understand that the arbitrator may grant any remedy or relief that the arbitrator deems just and equitable, including any remedy or relief that would have been available to me or the Company, had the matter been heard in court. This authority includes the right to award compensatory and exemplary damages attorney's fees, costs, and other remedies to the extent those remedies would be available under applicable law in court. Additionally, I acknowledge that under this Agreement, while I may not file a lawsuit to resolve a dispute against the Company, that I may file a complaint with a federal, state, or other governmental administrative agency regarding legally protected rights. For Claims covered by this Agreement, arbitration is the Parties' exclusive remedy.

Arbitration Procedure:

For purposes of this Agreement, arbitration shall be conducted before a neutral arbitrator agreed upon by the Parties, independent from any organization; such arbitration shall be conducted under the American Arbitration Association ("AAA") National Rules for the Resolution of Employment Disputes, unless the Parties agree to use other rules or procedures. Should the Parties be unable to agree upon a neutral arbitrator for whatever reason, then the Parties shall agree upon a neutral organization (AAA, JAMS, or National Arbitration Forum) to ensure that the Parties' commitment to binding and final arbitration of their employment disputes is fulfilled; such an arbitration shall be conducted under the rules of that neutral organization, unless the Parties agree to use other rules or procedures. The Party seeking to arbitrate a dispute must submit written notice of the claim to the mutually selected arbitrator or to a neutral arbitration organization (in the event the Parties have not agreed on a neutral arbitrator) within the time period Prescribed by the statute or common law cause of action under which the claim is brought. The Parties under this Agreement will have full rights to legal representation in the arbitration process.

Discovery:

The parties shall be entitled to engage in discovery in the form of request for documents, interrogatories, requests for admissions, physical and/or mental examinations and depositions; however, each side shall be limited to three depositions and an aggregate of 30 discovery requests of any kind, including sub parts, except as mutually agreed to by the parties. Physical and/or mental examinations must be justified under the standards set forth by the Federal or Texas Rules of Civil Procedure. A deposition of a corporate representative shall be limited to no

more than four designated subjects. At a mutually agreeable date, the parties will exchange lists of experts who will testify at arbitration. Each side may depose the other side's experts, and obtain the documents they reviewed and relied upon, and these depositions will not be charged to the parties' aggregate limit on discovery requests or the three deposition limit. Any disputes concerning discovery shall be resolved by the arbitrator, with a presumption against increasing the aggregate limit of requests; additional discovery requests shall be granted only upon a showing of good cause.

Arbitration Fees & Costs:

Each party will pay for their attorney if a party wishes to be represented by an attorney. Pursuant to this Agreement, the Company will pay costs associated with the arbitration except for any filing fees(s) associated with the initiation of arbitration. The Parties will pay for their share of the filing fee to initiate arbitration.

Miscellaneous:

This Arbitration Agreement includes all of the foregoing recitals, statements and acknowledgements relating to the Parties' intention and agreement to arbitrate all employment disputes. If any of the foregoing terms or clauses of this Agreement are determined to be in violation of any law, rule or regulation or otherwise unenforceable, that determination shall not affect any of the remaining terms or clauses of this Agreement. All other clauses shall remain in full force and effect. In the event that any provision of this Agreement shall finally be determined to be unlawful, there shall be substituted a provision of similar import reflecting the original intent of the Parties to resolve their disputes through binding arbitration. This Agreement shall survive the termination of my employment and can only be revoked or modified by a writing signed by the Parties. *This Agreement does not alter the at-will employment relationship between the Company and me.*

I UNDERSTAND THAT THIS AGREEMENT IS EFFECTIVE FROM THE DATE OF MY EMPLOYMENT OR WHEN I SIGN IT (WHICHEVER IS EARLIER). I ALSO UNDERSTAND THAT IT RESTRICTS MY RIGHT TO SUE MY EMPLOYER AND APPLIES TO ANY EMPLOYMENT DISPUTE(S) INCLUDING THOSE THAT OCCURRED BEFORE THE DATE I SIGN BELOW.

I HAVE READ THE AGREEMENT ABOVE CAREFULLY AND HAVE BEEN GIVEN THE OPPORTUNITY TO CONSIDER THE TERMS AND EFFECT ON ME. BY MY SIGNATURE BELOW, I KNOWINGLY AND VOLUNTARILY AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

APPENDIX B

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain and/or enforce a mandatory arbitration program that requires our employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the following rules in our employee handbook that unlawfully prohibit you from:

WE WILL furnish you with inserts for the current employee handbook that (1) advise(s) that the unlawful provisions have been rescinded, or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or WE

WILL publish and distribute revised employee handbooks that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions.

ETS OILFIELD SERVICES, L.P.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/16-CA-172847 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

